IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

(1) State of Rajasthan Vs. Madan Singh
(S.B.C.Writ Pet.No.4006/2001)
(2) State of Rajasthan & Anr. vs. Praveen Kumar & Ors.
(S.B.C.Writ Pet. No.4007/2001)

Dated of Judgment:- 29th August, 2006

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RARIQ

Mr.Rameshwar Dave, Dy.Government Advocate for the petitioner.
Mr.Moti Singh, for the respondents.

BY THE COURT:-

REPORTABLE

These two writ petitions have been preferred by the State of Rajasthan challenging the orders of the Rajasthan Civil Services Appellate Tribunal(for short "the Service Tribunal") dated 9th July, 2001 passed in writ petition No.4006/01 and dated 16th May, 2001 passed in writ petition No.4007/01. By these two orders, the Tribunal decided two separate appeals preferred by the respondents as the question of law involved in these cases are identical therefore they are being decided together by a common judgment.

The case of respondent no.1 Madan Singh in writ petition No. 2006/01 is that his name was sponsored by the Employment

Exchange and on that basis Development Officer , Panchayat Samiti, Sirohi called him for interview on 2nd July, 1982 and thereafter appointed him vide order dated 13th July, 1982 on the post of Teacher Gr.III for a period of six months or till the availability of the selected candidates from Service Selection Commission in the pay scale of 355-10-415-15-550-20-570. Upon being further selected by Zila Parishad, Sirohi, he was appointed on regular basis vide order dated 23.11.1984. Thereafter on completion of period of probation of two years he was confirmed w.e.f. 23.11.1986 by order dated 9th May, 1988. It has been submitted that although, for grant of selection scale on completion of 9 years, the date of his initial appointment i.e. 16th July, 1982 has been taken as the basis to calculate such period of 9 years. But when the respondent published the eligibility list vide order dated 1.4.1987 for the purpose of promotion from Teacher Gr.III to Teacher Gr.II, the name of the respondent was shown at serial no.22. His initial appointment was made on 16th July, 1982 but many of the persons who were appointed after him were shown senior to him in the said list. The respondent therefore prayed for grant of seniority from the date of his initial appointment i.e. 16th July, 1982 and requested that the government be directed to treat 16th July, 1982 as the date of his regular appointment for all purposes.

The case of respondent no. 1 Praveen Kumar in writ petition no.2007/01 is that he also was initially appointed by the Block Development Officer in the similar manner on 22.9.1982 and thereafter further upon being selected by the Zila Parishad, Sirohi he was appointed vide order dated 16.10.1984 . Thereafter, he was confirmed vide order

dated 23.9.1987 w.e.f. 16.10.1984.

The Service Tribunal allowed the appeals filed by the respondents under two separate orders dated 9.7.2001 in writ petition no.2006/01 and dated 16.5.2001 in writ petition no.2007/01. These two orders passed by the Tribunal are under challenge in these two writ petitions.

I have heard the arguments of Mr.Rameshar Dave, learned Dy.Government Advocate and Mr. Moti Singh, learned counsel for the respondents.

Mr.Rameshwar Dave,Dy.Government Advocate has argued that the Service Tribunal has erred in law in treating the date 13th July, 1982 as the date with effect from which he shall be entitled to count seniority. In other words, the effect of the order of Service Tribunal would be that the respondents shall be deemed to have been appointed on regular basis even though their appointments were made purely on temporary basis for a period of six months or till the availability of the duly selected candidates by the District Service Selection Commission. He has argued that the appointments of the respondents were made on urgent temporary basis. Under proviso to Rule 18(2) read with Rule 23 of the Rajasthan Panchayat Samities and Zila Parishads Service Rules, 1959 (for short “the Rules of 1959”) which provided that if the duly selected candidates are not available for the post of Teacher, the Panchayat Samiti may make such appointment on the basis of names sponsored by

the District Employment Exchange. According to him, the initial appointment of the respondents were de hors the rules. He has further argued that the Tribunal committed an error of law in deciding that the respondents shall be entitled to seniority from the date of their ad hoc appointment. Such a direction and implementation thereof would effect large number of such employees who were placed above the respondents in the merit list prepared by the District Service Selection Commission. There is another reason why the request of the respondents to assign them seniority from the date of the initial appointment cannot be accepted. When the respondents were selected, their names were placed in the select list according to the placement assigned by the Service Commission on the basis of inter se merits of all the candidates. Many of the candidates who have appeared above them in the select list would certainly be adversely effected if the respondents are assigned seniority from the date of their ad hoc appointment. None of them have been impleaded as party in the appeal filed before the Tribunal. In their absence, the Tribunal ought not to have allowed the appeals preferred by the respondents and their appeals filed before the Tribunal should have been dismissed. He has therefore prayed that the judgment passed by the Service Tribunal may be set aside. In support of his arguments, learned Dy.Government Advocate has placed reliance on the decisions given in the case of State of Haryana vs. Haryana Veterinary & A.H.T.S. Association & Anr., reported in JT 2000(10) SC p.561 and State of Punjab vs. Ishar Singh & Ors., reported in JT 2001(5) SC p.331.

On the other hand, Mr.Moti Singh, learned counsel for the respondents has argued that the appointments of the respondents made respectively on 16.7.1982 and 1.10.1982 by orders dated 13.7.1982 22.9.1982 passed by the Development Officer of the Panchayat Samiti were against clear cut vacant post and were in regular scale of pay. They were appointed only when their names were sponsored by the District Employment Exchange. The respondents have also granted them benefit of selection scale of completion of 9 years service from the date of their initial appointments. It was therefore prayed that their initial appointments may be treated regular appointment for all practical purposes and there was no justification whatsoever not to grant them seniority on the basis of such initial appointments. The Service Tribunal was justified in allowing the appeal and therefore the writ petition deserves to be dismissed. Learned counsel for the respondents has relied upon the judgments of the Hon'ble Supreme Court in the cases of (1) Dr.Chandra Prakash & Ors. vs. State of U.P. & Anr., reported in (2002) 10 SCC p.710 (2) State of Punjab vs. Rupinder Kawal Sahib & Ors. , reported in (2002) 10 SCC 179, (3) Pramod K.Pankaj vs. State of Bihar & Ors., reported in (2004) 3 SCC p.723 and (4) D.R.Yadav & Anr. vs. R.IK.Singh & Anr., reported in (2003) 7 SCC p.110. He also relied upon the judgments of two Division Benches of this Court in the case of Avinash Kant vs. Central Administrative Tribunal & Anr., reported in 2001(2) WLC(Raj.)p.101 and Jeewan Das vs. State of Rajasthan & Ors., reported in RLR 1990(1) p.718.

I have considered the arguments advanced by both the learned counsels and perused the record.

Examination of the Rules of 1959 reveals that while appointments on regular basis are required to be made under Chapter III, there is a separate chapter namely Chapter V which provided for appointment on temporary basis. In Chapter III of the Rules of 1959, starting from Rule 15 to 19 the provisions relating to recruitments are contained. According to Rule 15, Commission is required to invite applications on receiving requisition from Panchayat Samiti / Zila Parishad . According to Rule 17 such applications are to be scrutinized by the Commission. The Commission has to forward its recommendations alongwith a merit list of the candidates prepared under Rule 18. Such merit list is required to be forwarded to the District Establishment Committee of the Zila Parishad which shall make allotment of the selected candidates to various Panchayat Samitis. According to Rule 19, the Panchayat Samiti/Zila Parishad is required to make appointment on the basis of order in which their names have been forwarded by the District Establishment Committee. Proviso to Rule 18(2) of the Rules provides that where selected candidates are not available, the Panchayat Samiti may make the appointment on ad hoc basis from the panel prepared by the Inspector of Schools of the District. A further examination of Rule 23 in Chapter V of the Rules of 1959 provides that in the event of non-availability of selected candidates, the appointment on ad hoc basis would be made only for a period of six months by calling the names of the eligible candidates from the nearest District Employment Exchange. But, sub-rule (4) of Rule 23 provides that such ad hoc appointment shall in no case be extended beyond 6 months except with concurrence of the

Committee. It further provides that the ad hoc appointment shall not be extended beyond 12 months except with prior concurrence of the said Service Commission. Rule 25 provides that a candidate who has been recruited on regular basis and has been appointed by promotion shall have to serve on probation for a period of two years.

In the present case, the petitioners were appointed on the post of Teacher Gr.III on ad hoc temporary basis. It was only when they were appointed upon being selected and recommended by District Service Selection Commission that they were placed on probation for a period of two years. This is what has been done in the orders by which the respondents have been treated to have been appointed on probation of two years. Immediately on completion of such two years, they have been treated as confirmed employee. I cannot accept the argument of the learned counsel for the respondents that according to Rule 24 of the Rules of 1959, the date of initial appointment of the respondents should be treated as the date of regular appointment for the purpose of grant seniority to them. All that Rule 24 provides is that seniority shall be reckoned from the date of substantive appointment. An appointment which has been made after following due procedure for regular recruitment can only be treated as a substantive appointment. In the present case, the appointment of the respondents made vide orders dated 13.7.1982 and 22.9.1982 respectively on the basis of the recommendations of the District Service Selection Committee can by no stretch of interpretation be termed as substantive appointment. Ad hoc appointment can no circumstance be described as substantive

appointment.

Two Supreme Court judgments cited by Mr.Rameshwar Dave, learned Dy. Government Advocate are on the point that the ad hoc appointment cannot be treated as regular appointment but these judgments were delivered in the context of granting benefit of selection scale/scale grade and calculation of requisite period therefor. Nonetheless, the principles of law decided therein are relevant for deciding the controversy involved in the present case. Relevant discussion thereabout shall be made at the appropriate place.

I have also respectfully considered the ratio of various judgments cited by the learned counsel for the respondents. The Hon'ble Supreme Court in Pramod K.Pankaj vs. State of Bihar & Ors. (supra) held that in absence of any statutory provision or Rules on the question of determination of seniority of an employee is to be reckoned from the date of his appointment as also continuous officiation in the lower post. Similar was the view in the case of D.R.Yadav & Anr. vs. R.K. Singh & Anr.(supra) in which their Lordships of the Hon'ble Supreme Court held that by virtue of Rule 7 of U.P. Development Authorities Centralized Services Rules, inter se seniority of appellants and respondents in that case must be determined on the basis of continuous length of service in the same and similar posts for which date of their initial appointment would be relevant criterion.Both these judgments do not in any manner help the respondents because it cannot be argued that in absence of the rules in the present case, the case govern the seniority

because Rules 24 which occupies the field is very much available.

As regards the judgment of the Hon'ble Supreme Court in Dr.Chandra Prakash & ors. vs. State of U.P. & Anr.(supra) is concerned, this case turned out on its own facts where the doctor possessing requisite qualifications under the Rules though temporarily appointed in U.P. State Medical Service against the substantive vacancies were continuing for long periods(from 1965-76 to 1983)enjoying all benefits of regular service and meanwhile also selected by P.S.C. The State of U.P. In the meantime promulgated the U.P. Regularisation of Ad hoc Appointments(on Post within the Purview of the Public Service Commission) Rules, 1979 but such doctors did not fall within the purview of said Rules. Thereafter, the P.S.C. selected candidates for appointment on regular basis but they could not be appointed on account of certain judgment passed by the High Court. Later, the said judgment was reversed by the Hon'ble Supreme Court when there was another Supreme Court judgment granting benefit of seniority to all doctors in PHMS from the date of his initial appointment. In view of conflict of these two decisions, the matter was referred to a five Judges Bench of the Hon'ble Supreme Court whereby the latter decision was set aside and the matter was remitted back to a three Judges Bench for decision on merits. It was in peculiar circumstances of that case, the Hon'ble Supreme Court in order to do complete justice to the parties especially those who had been serving the State of U.P. for a pretty long period on ad hoc basis and were apprehending that they might be rendered junior to all those P.S.C. selected candidates who joined service several years after the

initial appointment of the temporary doctors, treated the petitioners as having been appointed on the date they actually joined the service and their seniority has been counted from that date. Such an extra ordinary situation is not available in the present case. Moreover, in that case the appointment of the temporary doctors were made with concurrence and approval of the P.S.C. No such fact has been brought to the notice of the Court in the present case.

The case of State of Punjab vs. Rupinder Kawal Sahib (supra) was also distinguishable because her initial appointment was made on 6th April, 1968 on the post of Research Officer subject to approval of the P.S.C. The appointment was approved by the P.S.C. on 18.6.1968 and it was in that context the Hon'ble Supreme Court directed that for the purpose of her seniority, the date of initial appointment should form basis because she had undergone the process of selection and the P.S.C. had also approved her appointment.

The judgment cited by the learned counsel for the respondents of this Court in the case of Avinash Kant vs. Central Administrative Tribunal (supra) also does not help him because in that case again what was said was that in absence of any rule seniority has to be determined with effect from the date of his initial appointment . In the self same judgment it has also been held that if there be any specific Rules, the seniority has to be assigned in accordance with such rule. In the present case, the rule requires that seniority has to be assigned from the date of substantive appointment. None of the judgment cited at the

bar by the learned counsel for the petitioner holds that even when specific rule governing service condition of a government servant requires that seniority has to be assigned from the date of substantive appointment. Such rule should be deviated from the date of ad hoc/ temporary appointment.

Reference in this connection may be made to the judgment of Hon'ble Supreme Court in Santosh Kumar & Ors. vs. G.R.Chawla & Ors., reported in (2003)10 S.C.C. p.513 wherein on the question of determination of seniority of ad hoc appointees whose services were later regularised, their Lordships of the Hon'ble Supreme Court held that ad hoc appointments cannot be deemed to be substantive appointments. They were in the nature of stopgap or fortuitous appointments and therefore the period during which ad hoc appointees worked, cannot be counted for the purposes of seniority. Such ad hoc appointees whose services were regularised were entitled to be placed below the direct recruits appointed prior to their regularisation.

In Om Prakash Srivastava vs. State of M.P. & Anr., reported in (2005) 11 S.C.C. p.488, their Lordships of the Hon'ble Supreme Court while examining the question as to from what date the direct recruits appointed on probation is assigned seniority, held that confirmation of such probationer was dependent on his passing departmental examination within the extended period of probation, confirmed thereafter and his seniority shall be liable to be counted form the date of such confirmation even if a person junior to him passed the departmental

examination and was confirmed earlier to him was placed higher in seniority because that was the intention of the Rule.

In A.G.Sainath Reddy vs. Government of A.P.& Ors., reported in (2003) 4 SCC p.65, their Lordships of the Hon'ble Supreme Court in the context of regularisation of an employee after subjecting him to written test and interview held that such employee would be entitled to seniority only from the date of regular appointment.

In view of the above, both the writ petitions are allowed and the judgment passed by the Service Tribunal dated 9th July, 2001 in writ petition No. 4006/01 and another judgment dated 16th May, 2001 passed by the Service Tribunal in writ petition no. 4007/01 are set aside. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.